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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/672,100 | 09/26/2003 | Erwin R. John | 50124/01101 | 7113 |
| <div>7590 01/25/2007 FAY KAPLUN & MARCIN, LLP Suite 702 150 Broadway New York, NY 10038</div> | | | <div>EXAMINER BOUCHELLE, LAURA A</div> <div>ART UNIT 3763 PAPER NUMBER</div> | |
| SHORTENED STATUTORY PERIOD OF RESPONSE | | MAIL DATE | DELIVERY MODE | |
| 3 MONTHS | | 01/25/2007 | PAPER | |

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/672,100

Applicant(s)

JOHN, ERWIN R.

Examiner

Laura A. Bouchelle

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) 36-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 9/26/03, 12/8/03, 3/30/06
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Applicant's election of Invention I in the reply filed on 12/12/06 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 6, 9, 10, 12-18, 20, 21, 23, 24, 27, 28, 30, 32-34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gijsbers et al (US 6551301) in view of Cancro et al (US 20040116789). Gijsbers discloses a brain fluid ion concentration modification for treating neurological disorders comprising inserting a first and second conduit into contact with a patient's CSF, determining a chemical imbalance in the CSF, and treating the patient by supplying to the CSF with one conduit and withdrawing from the CSF (Col. 2, lines 20-60-68). The device comprises a first pump 14 between the first reservoir and the distal end of the first conduit (Col. 2, lines 20-35).

Art Unit: 3763

4. Claims 1, 20 differ from Gijsbers in calling for the step of detecting and analyzing brain activity. Claim 2, 24 differ in calling for the brain activity to be detected using QEEG. Cancro teaches a method for investigating central nervous system drugs comprising the steps of analyzing brain activity to determine the effectiveness of a drug using QEEG to determine normal from abnormal brain activity (Page 3, paragraph 0029, Page 4). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the method of Gijsbers to include the steps of monitoring brain activity using QEEG as taught by Cancro to determine normal from abnormal brain activity.

5. Claims 5, 11, 22, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gijsbers in view of Cancro as applied to claims 1, 20 above, and further in view of Harper et al (US 6436091). Claims 5, 11, 22, 29 differ from the teachings above in calling for the pump to be an osmotic pump. Harper teaches a method for delivering a pharmaceutical agent comprising an osmotic pump that allows the infusion rate to be adjusted (Col. 2, lines 50-55). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the pump of Gijsbers in view of Cancro to be an osmotic pump as taught by Harper so that the infusion rate of the device can be adjusted.

6. Claims 7, 8, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gijsbers in view of Cancro as applied to claims 1, 20 above, and further in view of Brengle et al (US 20030130645). Claims 7, 8, 25, 26 differ from the teachings above in calling for the device to include a plurality of chambers and a plurality of pumps. Brengle teaches a device of

Art Unit: 3763

delivering medical fluid comprising a plurality of chambers controlled by a plurality of pumps so that the treatment can be tailored to fit the patient's needs (Page 1, paragraph 0010). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device above to include a plurality of chambers and a plurality of pumps as taught by Brengle so that the treatment can be tailored to fit the patient's needs.

7. Claims 19, 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gijbers in view of Cancro as applied to claims 1, 20 above, and further in view of Saul et al (US 6575928). Claims 19, 35 differ from the teachings above in calling for the imbalance to be an intracranial pressure imbalance. Saul teaches a method for removing CSF from a patient's CSF space wherein the imbalance that is corrected is an imbalance of intracranial pressure because an imbalance in intracranial pressure can cause diseases. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the method above to include the treatment of intracranial pressure as taught by Saul because an imbalance in intracranial pressure can cause diseases.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura A. Bouchelle whose telephone number is 571-272-2125. The examiner can normally be reached on Monday-Friday 8-4.

Art Unit: 3763

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Laura A Bouchelle
Examiner
Art Unit 3763

LAB

